

AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2992

Introduced by Assembly Member Evans

February 24, 2006

An act to ~~amend Section 10708 of~~ *add Sections 10761.5 and 10761.7 to* the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2992, as amended, Evans. California State ~~University:~~ *competitive bidding; report.* University.

The California State University Contract Law requires the Trustees of the California State University to obtain specified financial information and the completion of a standard questionnaire with respect to prospective bidders for contracts estimated to exceed the value of a minor capital outlay project, as described. Existing law requires the questionnaire and financial statement to be verified under oath, as described. Existing law also requires the trustees to award the contract for the public works project to the lowest responsible bidder, as specified.

This bill would require the trustees to give notice to all prospective bidders that bidders will not be deemed responsible bidders unless all subcontractors listed to perform work in excess of four hundred thousand dollars (\$400,000) submit answers to questions contained in a standard form of questionnaire and a financial statement including a complete statement of the prospective subcontractor's financial ability and experience in performing public works projects. This bill would require the subcontractor to verify these documents under oath,

as described. In its application to local agencies, this bill would create a state-mandated local program.

This bill makes findings regarding the necessity of this requirement in order to further the objectives of Public Contract Law.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~The California State University Contract Law authorizes the Trustees of the California State University to enter into an agreement with a contractor to provide all or significant portions of the design services and construction of a project, chosen by a competitive bidding process that employs selection criteria in addition to cost. Existing law also requires a contractor, when selecting subcontractors under this provision, to competitively bid the for those portions of work.~~

~~This bill would require the trustees to report to the Legislature, on or before July 1, 2007, on the efficacy and effectiveness of the selection criteria to ensure a competitive bidding process for selecting contractors and subcontractors.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 10761.5 is added to the Public Contract
- 2 Code, to read:
- 3 10761.5. The Legislature hereby finds and declares all of the
- 4 following:
- 5 (a) The establishment by the California State University of a
- 6 uniform system to evaluate the ability, competency, and integrity
- 7 of bidders on public works projects pursuant to Sections 10760
- 8 and 10761 is in the public interest and has resulted in the highest
- 9 quality of construction by general contractors for the lowest
- 10 costs, and is in the furtherance of the objectives stated in Section
- 11 100.
- 12 (b) The application of Sections 10760 and 10761, when
- 13 applied to subcontractors performing on California State

1 *University projects as the prime contractor, has also resulted in*
2 *the highest quality of construction at the lowest cost and has also*
3 *furthered the objectives in Section 100.*

4 *(c) Section 1103 defines a “responsible bidder” as a bidder*
5 *who has demonstrated the attribute of trustworthiness, as well as*
6 *quality, fitness, capacity, and experience to satisfactorily perform*
7 *the public works contract, and Section 4107 authorizes a prime*
8 *contractor, performing a public works project, to substitute a*
9 *subcontractor under specified circumstances, including when the*
10 *awarding authority determines that a listed subcontractor is not*
11 *a responsible contractor.*

12 *(d) Therefore, the Legislature finds and declares that, in order*
13 *to further the objectives of Section 100 and ensure that only*
14 *responsible subcontractors perform work on public works*
15 *projects at the California State University, it is in the best*
16 *interest of this state to extend the prequalification process*
17 *required under Sections 10760 and 10761 to all subcontractors.*

18 *SEC. 2. Section 10761.7 is added to the Public Contract*
19 *Code, to read:*

20 *10761.7. (a) The trustees shall, on contracts the estimated*
21 *cost of which exceeds four hundred thousand dollars (\$400,000),*
22 *give public notice to all prospective bidders that bidders will not*
23 *be deemed responsible bidders unless all subcontractors listed to*
24 *perform work in excess of four hundred thousand dollars*
25 *(\$400,000) submit answers to questions contained in a standard*
26 *form of questionnaire and a financial statement including a*
27 *complete statement of the prospective subcontractor’s financial*
28 *ability and experience in performing public works projects.*

29 *(b) The standard questionnaire and financial statement*
30 *established by the trustees pursuant to subdivision (a) shall*
31 *contain, at a minimum, the same general elements contained in*
32 *the standard questionnaire and financial statement required of*
33 *prospective bidders pursuant to Section 10760. This subdivision*
34 *shall not preclude the trustees from requiring additional*
35 *information specific to subcontractors in the standard*
36 *questionnaire and financial statement.*

37 *(c) When completed, the questionnaire and financial statement*
38 *shall be verified under oath by the prospective subcontractor in*
39 *the manner in which pleadings in civil actions are verified.*

1 (d) *Nothing in this section shall be interpreted to prevent the*
2 *prospective bidder from substituting a subcontractor pursuant to*
3 *Section 4107 in the event the trustees determine a listed*
4 *subcontractor is not a responsible contractor.*

5 SEC. 3. *No reimbursement is required by this act pursuant to*
6 *Section 6 of Article XIII B of the California Constitution because*
7 *the only costs that may be incurred by a local agency or school*
8 *district will be incurred because this act creates a new crime or*
9 *infraction, eliminates a crime or infraction, or changes the*
10 *penalty for a crime or infraction, within the meaning of Section*
11 *17556 of the Government Code, or changes the definition of a*
12 *crime within the meaning of Section 6 of Article XIII B of the*
13 *California Constitution.*

14 ~~SECTION 1. Section 10708 of the Public Contract Code is~~
15 ~~amended to read:~~

16 ~~10708. (a) When, in the opinion of the trustees, the best~~
17 ~~interests of the California State University dictate, the trustees~~
18 ~~may enter into an agreement with a contractor to provide all or~~
19 ~~significant portions of the design services and construction of a~~
20 ~~project under this chapter. The contractor shall design the project~~
21 ~~pursuant to the scope of services set forth in the request for~~
22 ~~proposals, build the project, and present the completed project to~~
23 ~~the trustees for their approval and acceptance.~~

24 ~~(b) Work under this section shall be carried out by a contractor~~
25 ~~chosen by a competitive bidding process that employs selection~~
26 ~~criteria in addition to cost. Any design work performed pursuant~~
27 ~~to this section shall be prepared and signed by an architect~~
28 ~~certificated pursuant to Chapter 3 (commencing with Section~~
29 ~~5500) of Division 3 of the Business and Professions Code.~~

30 ~~(c) When the design of portions of the project permits the~~
31 ~~selection of subcontractors, the contractor shall competitively bid~~
32 ~~those portions. The contractor shall provide to the trustees a list~~
33 ~~of subcontractors whose work is in excess of one-half of 1~~
34 ~~percent of the total project cost as soon as the subcontractors are~~
35 ~~identified. Once listed, the subcontractors shall have the rights~~
36 ~~provided in the Subletting and Subcontracting Fair Practices Act~~
37 ~~(Chapter 4 (commencing with Section 4100) of Part 1).~~

38 ~~(d) On or before July 1, 2007, the trustees shall report to the~~
39 ~~Legislature on the efficacy and effectiveness of the selection~~
40 ~~criteria, employed pursuant to subdivisions (b) and (c), to ensure~~

- 1 ~~a competitive bidding process for the selection of contractors and~~
- 2 ~~subcontractors under this section~~

O